

# **Exhibit E**

**In the Matter of:**

FTC, et al. v. Quincy Bioscience Holding, et al.

*August 20, 2020*

*Mark Underwood - 30(b)(6) - Confidential*

**Condensed Transcript with Word Index**



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1 **Q. Let's look at the disclosure that appears at the**  
 2 **bottom of this chart. It states, "In a computer**  
 3 **assessed, double-blinded, placebo-controlled study,**  
 4 **Prevagen improved recall tasks in subjects."**

5 **Mr. Underwood, when we met with you and your**  
 6 **attorneys in April of 2016, you explained that this**  
 7 **chart and the disclosure that I have just read to you**  
 8 **was a reference to the Madison Memory Study, and**  
 9 **specifically that it was depicting results for the**  
 10 **Groton Maze Recall Complete task of the Madison Memory**  
 11 **Study. Is that correct?**

12 MR. CASTELLO: Objection.

13 THE WITNESS: Yes. So the GML data -- I believe  
 14 the AD8 score 0 to 2, more specifically.

15 BY MS. SOBERATS:

16 **Q. Okay, when you say GML, what does that stand**  
 17 **for?**

18 A. Oh, I'm sorry, you said Groton Maze Learning,  
 19 that's the acronym for Groton Maze Learning. GML,  
 20 sorry.

21 **Q. Okay, so this depicts the results for the Groton**  
 22 **Maze Learning, not the Groton Maze Recall?**

23 A. Oh, you know, my mistake. You could be correct.

24 **Q. Okay. And does this chart show the results just**  
 25 **for the treatment group of the Madison Memory Study?**

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1 A. Yes.

2 **Q. Why does it not show the results of the**  
 3 **treatment group versus placebo?**

4 MR. CASTELLO: Objection.

5 THE WITNESS: Well, the entire context of the  
 6 study has always been on our website, with the posting  
 7 of the Madison Memory Study results. There's simply not  
 8 room in the graphic to illustrate all the details.

9 BY MS. SOBERATS:

10 **Q. Okay. And let's look at the x axis. I see**  
 11 **depictions here for 8 days, 30 and 90. The Madison**  
 12 **Memory Study had five time points, correct?**

13 A. Yes.

14 **Q. Days 0, 8, 30, 60 and 90?**

15 A. That's correct.

16 **Q. Okay. So why is the data for day 60 not**  
 17 **depicted on the x axis in this graphic?**

18 A. Same reason as the day 0 is not there. It's not  
 19 meaningful to the viewer, if you will. Of course, at  
 20 day 0, there's no improvement to be expected. The  
 21 consumers have three basic questions. For one, how long  
 22 is your study? The study was 90 days. Two, what's it  
 23 going to do for me quickly? Hence the eight-day result.  
 24 And since their purchase is based off of buying a  
 25 one-month supply, the 30-day data was included. So it's

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1 really as much as you can fit on the graph, or in this  
 2 format, without becoming too complex, and that  
 3 complexity is provided in the context of the entire  
 4 study, which has always been posted on our own website.

5 **Q. And who made the decision to leave out the day**  
 6 **60 data from this graphic?**

7 MR. CASTELLO: Objection.

8 THE WITNESS: Our marketing team.

9 BY MS. SOBERATS:

10 **Q. Were you involved in those discussions?**

11 A. Yes.



21 MR. CASTELLO: Before the witness answers,  
 22 Annette, can you just tell me which interrogatory and  
 23 which one of the responses, because there were some  
 24 supplemental responses in addition to the original  
 25 response.

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1 MS. SOBERATS: I would have to go back. I don't  
 2 actually have that information readily available, Geoff.  
 3 Just a moment.

4 THE WITNESS: And could I ask, the entirety of  
 5 this document, which document is this?

6 MS. SOBERATS: As I indicated earlier, this is  
 7 the complaint that Plaintiffs filed in this case.

8 THE WITNESS: Okay, I'm sorry. I -- I have to  
 9 admit, when I see one legal document, they all tend to  
 10 look a little bit alike. Let's see here.

11 MR. CASTELLO: Just for my own edification, I'm  
 12 sorry, if the court reporter can just read back the  
 13 question. Annette, the witness can answer the question.

14 MS. SOBERATS: Okay.

15 MR. CASTELLO: My struggle is just that because  
 16 you referenced the interrogatory responses, I think it's  
 17 fair to for us to know which one it is. You can make a  
 18 representation that you've summarized one of the  
 19 interrogatory responses, but for the record, without  
 20 that type of a representation and caveat, you know, if  
 21 you're going to reference a specific interrogatory  
 22 response, I would just ask if you could identify it so  
 23 we'll make certain that we're on the same page.

24 MS. SOBERATS: Sure. And I apologize for not  
 25 having the reference available.

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1 **Q. Okay. It does have a UPC number, correct?**

2 A. In typical printing it would, yeah. UPC is  
3 applied at the printer.

4 **Q. Okay.**

5 A. Yeah.

6 **Q. And if you can please look at the three -- the  
7 three-bar chart here under Clinically Tested.**

8 A. Um-hmm.

9 **Q. Can you tell me in this chart what outcome from  
10 the Madison Memory Study is this chart based on?**

11 A. Based on our previous conversations, I'm not  
12 certain.

13 **Q. And who created this three-bar chart?**

14 A. I don't know the date of the packaging. There's  
15 no version number on what you've provided. So I don't  
16 know when this was -- and by the way, this is just the  
17 artwork with the bleed and the varnish on it for the  
18 printer to use. So I don't know the exact time frame.

19 **Q. Okay. Mr. Castello, Mr. Underwood was  
20 designated as the corporate representative for topic C,  
21 which pertains to advertising, that would include this  
22 bar chart which was included in Prevagen's advertising,  
23 and I've been unable to get any answers from him about  
24 what outcome from the Madison Memory Study this bar  
25 chart is based on. He's unable to tell me who created**

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1 **this bar chart. And my colleagues tried to elicit this  
2 information from Mr. Olson, who has marketing  
3 responsibilities at Quincy, and from Kenneth Lerner, who  
4 was, as you know, the principal investigator of the  
5 Madison Memory Study, and no witness has been able to  
6 answer these very basic questions about this chart which  
7 was prominently featured in advertising for Prevagen.**

8 **So we will need to follow up on this issue.**

9 **We've tried multiple ways and multiple times and we're  
10 simply not getting the information that should be  
11 readily forthcoming from the corporate representative  
12 and the other witnesses that we have deposed during fact  
13 discovery.**

14 MR. CASTELLO: If you wanted testimony from a  
15 corporation through Rule 30(b)(6) to this level of  
16 granularity, there should be a topic that sets forth,  
17 with specificity, exactly what you intended to do by  
18 using that chart or whatever iteration. So I disagree.  
19 I would be happy to talk to you in a meet and confer  
20 context to see what we can do to provide that  
21 information, but reading this 30(b)(6) notice that has  
22 been marked as this deposition today, at that level of  
23 granularity, it is not -- it is not called for in the  
24 topic list.

25 MS. SOBERATS: And I would refer you,

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1 Mr. Castello, to the very last sentence of topic C,  
2 which very clearly states that it includes the creation,  
3 development, revision, evaluation and approval of the  
4 specific advertising and marketing materials attached as  
5 exhibits to the complaint, and as I've established in my  
6 questioning, this bar chart appeared in the complaint.  
7 We had excerpts of it on multiple pages of the  
8 complaint, and it was also attached in exhibits to the  
9 complaint.

10 And we've also asked for this information -- we  
11 have asked for information about this bar chart in the  
12 interrogatories that we served on the Defendants.  
13 Presumably the corporate representative would have  
14 reviewed those interrogatory responses and been on  
15 notice that we would be asking about this chart.

16 MR. CASTELLO: We are in disagreement, but as I  
17 said, we'll meet and confer and attempt to come to a  
18 resolution.

19 MS. SOBERATS: Okay. Thank you.

20 I would also like to note that we are going to  
21 have to keep this deposition open, since Mr. Underwood  
22 did not answer my questions about research at Quincy  
23 that was started after the Madison Memory Study. Those  
24 questions pertain to an ongoing dispute that is  
25 currently being briefed in the Southern District of New

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1 York, and so we will keep this deposition open pending  
2 resolution of that discovery dispute.

3 MR. CASTELLO: Just for the record, my silence  
4 is not accepted as an admission that Plaintiffs are  
5 entitled to it. It is the company's, the Defendants'  
6 position that, in fact, the Plaintiffs are not entitled  
7 to that information, but yes, it is the subject of an  
8 open dispute.

9 MS. SOBERATS: Thank you.

10 Kate, do you have any questions that you would  
11 like to ask of the witness?

12 MS. MATUSCHAK: I have no questions today, but I  
13 may have questions if and when this deposition resumes  
14 after our discovery dispute is resolved.

15 MS. SOBERATS: Geoff, do you -- Mr. Castello, do  
16 you have any redirect?

17 MR. CASTELLO: No.

18 MS. SOBERATS: Okay. Well, that concludes our  
19 30(b)(6) deposition, but as I said, we will keep it open  
20 pending resolution of the ongoing discovery dispute.

21 MR. CASTELLO: And I'll refer to my most recent  
22 statement on that topic.

23 MR. DELEEUW: Could you guys say it one more  
24 time?

25 VIDEO TECHNICIAN: This concludes today's